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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,627	12/29/2000	Joseph F. Khouri	062891.0471	2064

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BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, TX 75201-2980

EXAMINER

WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/751,627

Applicant(s)

KHOURI ET AL.

Examiner

Stephan F. Willett

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC 102

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1, 14-15, 24, 35, 44, 51, 58 are rejected under 35 U.S.C. 102(e) as being anticipated by Katseff II et al. with Patent Number 6,301,258.

3. Regarding claim(s) 1, 14-15, 24, 35, 44, 51, 58, Katseff II teaches a communication network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52 and VoIP, col. 1, lines 15-16. Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the network operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42, but more specifically “data is played out [delivery rate] of telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate”, col. 4, lines 47-49. Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/ decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission

Art Unit: 2142

over a packet network", col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as "buffer manager" and "telephony application", col. 4, lines 45-46.

Claim Rejections - 35 USC 103

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103 and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff II et al. with Patent Number 6,301,258 view of Anandakumar et al. with Patent Number 6,804,244.

7. Regarding claim(s) 67-68, Katseff II teaches a communication network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52, and VoIP, col. 1, lines 15-16. Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the

Art Unit: 2142

network operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42, but more specifically “data is played out [delivery rate] of telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate”, col. 4, lines 47-49.

Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46. Katseff II teaches the invention in the above claim(s) except for explicitly teaching a network device that is remote. In that Katseff II operates to buffer and communicate data in a computer network, the artisan would have looked to the network communication loading arts for details of implementing network loading. In that art, Anandakumar, a related network communication system, teaches “by adapting transmission rate ... in VoIP”, col. 7, lines 30-31 in order to provide data transmission control.

Anandakumar specifically teaches remote sender rate adjustments, col. 30, lines 3-5. Further, Anandakumar suggests “adaptive control of source rate”, col. 27, lines 24-25 will result from implementing the adjustments. Thus, it would have been obvious to one of ordinary skill in the art to incorporate adjustable rate remote devices as taught in Anandakumar into the communication system described in Katseff II because Katseff II operates with various network configurations and Anandakumar suggests that optimization can be obtained by specifically adjusting remote rates. Therefore, by the above rationale, the above claims are rejected.

Art Unit: 2142

8. Claims 2-13, 16-23, 25-34, 36-43, 45-50, 52-57, 59-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff II et al. with Patent Number 6,301,258 view of Aybay with Patent Number 6,185,221.

9. Regarding claim(s) 2, 4, 17, 27, 37, 45, 64, Katseff II teaches a communication network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52, and VoIP, col. 1, lines 15-16. Katseff II teaches a memory or buffer coupled to the network to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the network operable to adjust, change and command the first delivery rate as “delays”, col. 4, lines 38-42, but more specifically “data is played out [delivery rate] of telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate”, col. 4, lines 47-49. Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/ decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform signals appropriately, col. 5, lines 53-55, and the “telephony application implements the functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet network”, col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46. Katseff II teaches the invention in the above claim(s) except for explicitly teaching a network interface as Ethernet or commands to reserve an amount of bandwidth. In that Katseff II operates to buffer and communicate data in a computer network, the artisan would have looked to the network communication scheduling arts for details of implementing network loading. In that art, Aybay, a related network communication system, teaches “buffering if incoming and/or outgoing

Art Unit: 2142

packets”, col. 7, line 46 in order to provide data transmission control. Aybay specifically teaches “Ethernet”, col. 7, lines 11 and “any output channels requested by the channel will be reserved by the scheduler”, col. 14, lines 40-41 “based on the bandwidth capacity of the data link”, col. 7, lines 28 to insure a QOS. Further, Aybay suggests “network traffic control”, col. 7, line 47-48 will result from implementing the bandwidth scheduling. Thus, it would have been obvious to one of ordinary skill in the art to incorporate Ethernet bandwidth reservations as taught in Aybay into the communication system described in Katseff II because Katseff II operates with various network communication protocols and QOS and Aybay suggests that optimization can be obtained by specifically tailoring network traffic based on reservations. Therefore, by the above rational, the above claims are rejected.

10. Regarding claim(s) 3, 16, 25, 36, 46, 52, 65, Katseff teaches voice over IP, col. 1, lines 17-18.

11. Regarding claim(s) 5, Katseff teaches the adjustment specifies a new rate as “slower than normal rate”, col. 5, lines 54-55.

12. Regarding claim(s) 6, 18, 28, 38, 48, 50, 54, 56, 66, Katseff teaches the media controller to command adjustment of the first delivery rate based on the status of the memory determination, col. 5, lines 53-54.

13. Regarding claim(s) 7, 19, 29, 39, 62, Katseff teaches the media controller increases the delivery rate when memory is below a threshold, col. 5, lines 53-55.

14. Regarding claim(s) 8, 20, 30, 40, 49, 55, Katseff teaches the media controller decreases the delivery rate when memory is above a threshold, col. 6, lines 7-12; col. 7, lines 8-10.

15. Regarding claim(s) 9, 21, 31, 41, Katseff teaches an output device coupled to memory

Art Unit: 2142

and an interface to transform signals appropriately, col. 5, lines 53-55.

16. Regarding claim 10-11, 23, 33, 43, Anandakumar teaches legacy user controlled commands via an input device such as a GUI to adjust that rate at which media is being output, col. 52, lines 44-45.

17. Regarding claim(s) 12, 22, 26, 32, 42, 47, 53, 59, Katseff teaches an output device coupled to memory and an interface to transform signals appropriately such as a speaker for audible sounds, col. 4, line 39.

18. Regarding claim(s) 13, Katseff teaches the media controller to determine whether the first delivery rate may be adjusted wherein the rate should not be adjusted if the output will be not “intelligible”, col. 5, lines 66-67, thus operation should be at the first or “normal” delivery rate, col. 5, lines 30-33.

19. Regarding claim(s) 34, Katseff teaches the logic is embedded in software as a “program”, col. 3, lines 31-32.

20. Regarding claim(s) 57, 61, 63, Katseff teaches the determined rate is determined at the endpoint device as “buffer manager” and “telephony application”, col. 4, lines 45-46.

21. Regarding claim(s) 60, Katseff teaches output device as a telephone col. 1, lines 21-24.

Response to Amendment

1. Based on the new grounds for rejection the applicants arguments are moot. The broad claim language used is interpreted on its face and based on this interpretation the claims have been rejected.

2. The limited structure claimed, without more functional language, reads on the references

Art Unit: 2142

provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

3. Applicant suggests Katseff does not teach rate control and associated command at an "external device", Paper Filed 3/28/05, Page 17, lines 1-20. However, broadly interpreting "external" and the fact "data is played out [delivery rate] of telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate", col. 4, lines 47-49.

In any event, Anandakumar clearly teaches external rate control as does Rate Adaptive DSL (RADSL) standards. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

4. Applicant suggests Katseff II "merely discloses that the delivery rate must be slower than normal", Paper Filed 3/28/05, Page 21, lines 14-15. However, if there is no rate adjustment then by default the first delivery rate will be the "normal" delivery rate. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

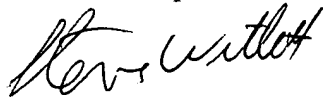
Conclusion

22. Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the Foodee et al. with Patent Number 6,455,696 and Ptasinski et al. with Patent Number 6US2002/0080886 are suggested. The other references cited teach numerous other ways to modify transmission rates, thus a close review of them is suggested.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

Art Unit: 2142

6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is (571) 272-0044.
7. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2100.



Stephan Willett

Patent Examiner

June 8, 2005